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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

LYLE R. KELLER,

Plaintiff and Appellant,

v.

RONALD D. KELLER,

Defendant and Respondent.

B208405

(Los Angeles County
Super. Ct. No. BC356629)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert H. O'Brien, Judge. Affirmed.

Kalra Law Firm and Madhu Kalra for Plaintiff and Appellant.

Law Offices of Lowell John Dosch and Lowell John Dosch for Defendant and Respondent.

INTRODUCTION

Plaintiff Lyle R. Keller appeals from a judgment in favor of defendant Ronald D. Keller. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff Lyle R. Keller (Lyle) and defendant Ronald D. Keller (Ronald) are brothers. Lyle bought a triplex from his father, George B. Keller (father), with financing from his father. The triplex was located at the following addresses in the city of Baldwin Park: 14117 Merced Avenue, 14117½ Merced Avenue, and 14119 Merced Avenue, collectively also identified as Los Angeles County assessor parcel number 8553018013 (the Merced property). His father signed a grant deed to Lyle dated December 26, 1986, which was recorded on December 31, 1986. As security for the financing, Lyle executed a promissory note and a deed of trust dated December 26, 1986 to his father for the amount of \$38,616.65. The deed was recorded on February 25, 1987.

Lyle executed a quitclaim deed on February 17, 1987, transferring to Ronald all Lyle's interest in the Merced property (the quitclaim deed). The following handwritten notation appears on the deed: "This is a bona fide gift and the grantor received nothing in return." Ronald did not record the quitclaim deed until March 24, 2006.

Sometime thereafter, Lyle entered into a transaction to sell the Merced property to a third party. During the sale process, Lyle learned that the quitclaim deed had been recorded and was a cloud on his title. The sale was not completed.

Lyle initiated the instant action against Ronald, seeking to quiet title to the Merced property and cancellation of the quitclaim deed. In the verified first amended complaint (FAC) filed January 4, 2007, in addition to the foregoing facts, Lyle represented that, since 1986, Lyle had managed, leased, maintained insurance on, and paid property taxes on the Merced property as his own property, subject only to the deed of trust.

In 1991, Lyle's father died. Two actions were initiated in Los Angeles County Superior Court, one to probate the father's estate, with Lyle as executor, and the other to administer the father's trust. In 1996, the probate court approved the assignment of the note and deed of trust to a beneficiary of the estate, George Eugene Keller. Ronald successfully moved the probate court to remove Lyle and name Ronald as executor. In that capacity, Ronald did not finalize the assignment, but rather commenced foreclosure proceedings on the Merced property in order to collect the note. During the course of the ensuing litigation, Lyle paid the note and the trial court cancelled the deed of trust by order issued on March 11, 2006. As previously noted, Ronald recorded the quitclaim deed promptly thereafter, on March 24.

In the verified FAC, Lyle alleged that Ronald procured the quitclaim deed and "interfered plaintiff [*sic*] of the property purportedly conveyed by the deed with the intent to defraud" Lyle. Incorporating the allegation in each cause of action, Lyle identified them as follows: Cancellation of [quitclaim] Deed and award of punitive damages (first count), Quiet Title (second count), and an untitled third count seeking various injunctions to restrain Ronald from interfering with Lyle's ownership, management and control of the Merced property.

The trial court conducted a bench trial on January 28 and 29, 2008. The only witnesses called were Lyle and Ronald.

In the verified FAC, Lyle represented that the quitclaim deed was void or voidable; he did not sign the deed, he did not receive any consideration for the deed, and at all relevant times, he was the owner of the Merced property. However, at trial, Lyle testified that most of the quitclaim deed was in his handwriting and he signed it. He said he "did this in contemplation of a problem" in connection with a divorce in order to protect his property. Lyle explained he did that "[i]n case I had any problem with [my ex-wife's] ownership of it. It was actually Ronald's property at that time. I asked him to hold this quitclaim deed and hold it for me." Lyle offered into evidence a recorded notice of lis pendens from his dissolution proceedings. It pertained to a different property at issue in the dissolution and was dated 1981.

Lyle said he handed the quitclaim deed to Ronald “to hold for me, not to transfer property, but to hold for me,” and that it was not his intent to give Ronald the property in actuality, but it was a “back-up type of thing.” According to Lyle, Ronald never asked Lyle to get out or hand the ownership or management of the Merced property over to him, and Ronald never offered to pay insurance or the loans on the property.

According to Ronald, during the 1980s, he and Lyle were living together. They were buying property, that is, Lyle was buying the property and Ronald was supplying the money and working on the property. Ronald recalled that Lyle gave him the quitclaim deed and that he paid Lyle money, but he was paying Lyle “money all along.” Ronald was “absolutely” not given the quitclaim deed in trust to hold it on Lyle’s behalf. Lyle asked Ronald not to record several documents, including the quitclaim deed. Ronald lost track of the quitclaim deed and thought Lyle had taken it and other documents with him when he moved out of Ronald’s home. Ronald did not find it until 2006, when he was looking for documents requested by Lyle’s attorney during the probate of their father’s estate. When Ronald found the quitclaim deed, he was shocked because, as he put it, “without this document, I had nothing.”

After considering closing arguments submitted as post trial briefs by the parties, the trial court issued a tentative decision on February 19, 2008. The parties submitted responses. The court adopted the tentative decision as its proposed statement of decision and stated a proposed judgment. No party filed objections during the mandated time period. On April 10, 2008, the court adopted the document as its statement of decision and the judgment for Ronald on Lyle’s FAC.

As to the FAC, the trial court found that Lyle’s testimony and admissions concerning his actions with respect to the quitclaim deed were contrary to those he claimed in the verified FAC: Lyle signed the deed and deeded the Merced property to Ronald so that, in dissolution proceedings then pending, his ex-wife or the court would not consider the property in the proceedings. The court acknowledged that such an approach “would be fraud upon the court and as to the ex-wife if [Lyle’s] ownership interests in real property were in issue in the dissolution proceedings.” The trial court

found that Lyle failed to prove fraud by Ronald in procuring or receiving the quitclaim deed or in acting upon it, citing CACI 1900-1908. On that basis, the trial court ruled that Lyle failed to prove his causes of action for cancellation of the quitclaim deed and for quiet title, and that Lyle's request for injunctions was without merit. The court observed that, "it is [Lyle's] apparent attempt at fraud that started the process," and that "one must do equity to successfully pursue equity," such as in an equitable action for cancellation of a deed. The court stated that judgment was for Ronald on the FAC.

Lyle moved for a new trial. As the basis, he claimed surprise pursuant to Code of Civil Procedure section 657, subdivision (3), in that he did not expect the court's decision "to be based on the court's interpretation of [his] prior divorce case." He claimed that for the same reason, there was newly discovered evidence (*id.*, subd. 4); the evidence was insufficient to justify the decision or the decision was against the law (*id.*, subd. 6); the court's erroneous interpretation of the dissolution proceedings resulted in an error in law (*id.*, subd. 7). Lyle asserted that he had had difficulty recalling the dates of his divorce proceedings and "could only speculate that he quitclaimed the real property to protect it from future marriages." Lyle presented, and requested the court to take judicial notice of, the final dissolution judgment in the proceedings referenced in the 1981 document received into evidence. He pointed out that the dissolution proceedings "ended in 1982, over four . . . years prior to [Lyle] acquiring interest in the" Merced property. He also requested that the court reopen the case to allow him to amend the FAC to add a cause of action for adverse possession.

At the May 15, 2008 hearing on Lyle's motion for a new trial, the trial court denied the motion. The court reiterated that, during trial, Lyle did not prove the elements of fraud, and fraud was the basis for the causes of action in his complaint. In the absence of any new matter that was not available during trial, the court reasoned, Lyle had not shown any grounds justifying a new trial. The court then entered a judgment against Lyle on the FAC.

DISCUSSION

Lyle raises two contentions: (1) Because all the elements of adverse possession were properly pleaded and proved, the court erred in granting judgment to Ronald on the FAC. (2) The trial court erred in denying Lyle's request to amend the FAC according to proof. The contentions are without merit.

Lyle provides no citation, as required by California Rules of Court, rule 8.204, to legal authority to support his first contention, for example, authority regarding the power of the trial court to grant judgment on a cause of action not pleaded in the complaint. We therefore treat the contention as waived. (*Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545-546.)

The timing of Lyle's request for leave to amend the FAC precludes the application of the general rule that "[t]he trial court has broad discretion to grant or deny an amendment to a complaint at trial, and California courts have been extremely liberal in allowing such amendments to conform to proof," including amendments to add a cause of action where recovery is sought on the same set of facts. (*Glaser v. Meyers* (1982) 137 Cal.App.3d 770, 776-777.)

The trial court had already pronounced its judgment by the time Lyle made the amendment request. "Amendments proffered after judgment is rendered, however, are allowed only if the judgment is vacated as by granting a motion for new trial." (*Young v. Berry Equipment Rentals, Inc.* (1976) 55 Cal.App.3d 35, 38.)

The threshold issue then is whether the trial court abused its discretion by denying Lyle's motion for a new trial. We review a trial court's denial of a motion for new trial for abuse of discretion and will not disturb the trial court's ruling absent a clearly "“manifest and unmistakable abuse of discretion.””" (*Fredrics v. Paige* (1994) 29 Cal.App.4th 1642, 1647.)

In his motion for new trial, Lyle alleged surprise, newly discovered evidence, insufficiency of the evidence, and errors in law. All of them related to his claim of surprise that the trial court's decision was based upon the court's erroneous interpretation

of Lyle's dissolution judgment; none related to the quitclaim deed. The asserted grounds must materially affect Lyle's substantial rights in order to warrant the granting of a new trial. (Code Civ. Proc., § 657.) As the trial court explained, interpretation of the dissolution judgment was not relevant to the court's finding that Lyle failed to prove that the quitclaim deed was fraudulent or that Ronald defrauded Lyle by recording the deed. Lyle's failure to prove such fraud was a sufficient basis for the trial court's judgment against Lyle.

In the FAC, Lyle pleaded that Ronald had defrauded him by recording a quitclaim deed that Lyle did not execute or authorize anyone else to execute.¹ By verifying the FAC, Lyle represented this as a truthful fact. At trial, however, he testified that indeed he did execute the deed and give it to Ronald. Thus, there was substantial evidence for the trial court to find that the quitclaim deed was not fraudulent.

At trial, Lyle offered another reason for Ronald's recording of the deed to be fraudulent. Lyle testified that he gave the quitclaim deed to Ronald just to hold in trust for him during his pending dissolution proceedings and never intended to transfer the Merced property to Ronald or for Ronald to record the deed. Subsequently, Lyle's attorney introduced into evidence a document, a recorded *lis pendens* on another property, that disclosed that the dissolution was proceeding toward resolution in 1981, more than six years prior to the date Lyle executed the quitclaim deed. Thus, there was substantial evidence that Lyle had no reasonable and credible explanation for why Ronald was supposedly holding the deed in trust for Lyle. At that point, the relevant evidence before the trial court consisted of the properly executed and recorded quitclaim deed giving Ronald ownership of the Merced property. Thus, the record reveals that

¹ Paragraph 10 of the complaint states: "[The quitclaim deed] recorded on March 24, 2006 . . . is void or voidable against [Lyle]. [Lyle] did not on February 17, 1987, or at any other time, make, sign or acknowledge the purported deed or authorize any person or persons to do so. [Lyle] is and at all times herein mention[ed] was, the owner of the property purported to be conveyed by the deed."

substantial evidence supports the trial court's judgment in favor of Ronald as the owner of the Merced property.

Clearly, the dissolution judgment was not material to the court's proper determination of the substantial rights at issue, that is, ownership rights in the Merced property. Accordingly, we conclude that the trial court did not abuse its discretion when it denied Lyle's motion for a new trial. (Code Civ. Proc., § 657; *Fredrics v. Paige, supra*, 29 Cal.App.4th at p. 1647.) As we previously explained, even if Lyle's request for leave to amend the FAC did not fail on other grounds, the proper denial of the motion for a new trial blocked any avenue otherwise open for the trial court to permit the amendment. (*Young v. Berry Equipment Rentals, Inc., supra*, 55 Cal.App.3d at p. 38.)

DISPOSITION

The judgment is affirmed. Defendant Ronald D. Keller shall recover his costs on appeal.

JACKSON, J.

We concur:

PERLUSS, P. J.

WOODS, J.